

# PART 6 – APPLICATIONS AND REVIEW PROCEDURES

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## CHAPTER 1 – APPROVAL AND APPEAL AUTHORITIES

### Section 6-101      Summary Decision Matrix.

The following table describes the decision-making authority and the appeal authority for the approvals that may be granted under this Code. Where more than one body may be the decision or appeal body for a specific type of approval, the Development Services Manager is responsible for determining the applicable decision or appeal body.

**Table 6-101A – Applications by Decision Body and Type of Procedure<sup>1</sup>**

Type of Procedure:	Decision Body:	DS MGR	ZA	ORIGINAL	HO	BA	DRB	PZ	RRC <sup>2</sup>	CC	Superior Court	Nghd Meeting	Code Reference
Abatements					D	A					A		ZDC 6-311
Annexation										D			ARS 9-471
Code Interpretation/ Similar use Rulings			D			A					A		ZDC 6-301
Code Text Amendment								Rev	Rev	D	A		ZDC 6-305
Development Plan Major (all new development & expansions over 5,000 square feet, except single-family homes not included in a PAD) Minor (expansions up to 5,000 square feet or 20% of existing building, which ever is less; and two- and three-family dwelling projects)							D		D	A	A		ZDC 6-307
	D						A		A	A	A		ZDC 6-307
General Plan Amendment								Rev	Rev	D	A	Yes	ZDC 6-303
Major Amendment								Rev	Rev	D	A	Yes	ZDC 6-303
Lot Line Adjustment										D			TCC 30
Lot Split		D								A			TCC 30
Modify Approved Plan, PAD or Condition of Approval:													
Major Modification				D							A	Yes	ZDC 6-313
Minor Modification	D			A							A		ZDC 6-313
Planned Area Developments (PADs) and PAD Amendments							D	D	D	A		Yes	ZDC 6-306
Preliminary Review Process		D											ZDC 6-302
Shared Parking Approvals		D				A					A		ZDC 6-312
Sign Permit		D					A			A			ZDC 4-904
Subdivision								Rev		D			TCC 30
Time Extension		D		D									ZDC 6-901
Use Permit					D	D/A		D	D	D/A	A	Yes	ZDC 6-309
Variance					D	D/A		D	D	D/A	A	Yes	ZDC 6-310
Zoning Map Amendment (Re-Zoning)								Rev	Rev	D	A	Yes	ZDC 6-305

1. Where this Code identifies more than one possible decision or appeal body, the Development Services Manager shall determine which body is applicable to a particular project.

2. Review or decision-making body determined by project location for the RRC.

**KEY**

**DS MGR** = Development Service Manager or his or her designee

**ZA** = Zoning Administrator

**ORIGINAL** = Decision body that made the original decision (modifications)

**HO** = Hearing Officer

**BA** = Board of Adjustment

**DRB** = Design Review Board

**PZ** = Planning and Zoning Commission

**RRC** = Redevelopment Review Commission

**CC** = City Council

**Rev** = Reviews and recommends action to City Council

**D** = Decision-making body

**A** = Appeal Authority

**Nghd. Meeting** = Neighborhood Meeting

## CHAPTER 2 – APPLICATION SUBMITTAL AND REVIEW

**Section 6-201      Initiation and Withdrawal of Application.**

**Section 6-202      Application Submittal.**

**Section 6-203      Application Acceptance.**

**Section 6-204      Administrative Review.**

**Section 6-205      Public Meeting Review.**

**Section 6-206      Public Hearing Review.**

**Section 6-207      Legislative Review.**

**Section 6-201      Initiation and Withdrawal of Application.**

- A.      Initiation of Application.** An application may be initiated under this Code by the City Council or a property owner. The property owner's written authorization shall be required for all applications, except that the City Council may initiate an application without the owner's authorization for a zoning (zoning district) amendment.
- B.      Withdrawal.** An applicant may withdraw an application at any time or the Development Services Manager may withdraw an application at the request of the applicant.

**Section 6-202      Application Submittal.**

- A.      Application Forms and Submittal Requirements.** Applications under the Tempe Zoning and Development Code shall be submitted to the Development Services Department, in accordance with the format and upon such forms as may be established by the Development Services Manager. Applications must be signed by the property owner or the property owner's authorized representative, except that applications initiated by the City Council must be signed by the Development Services Manager.
- B.      Preliminary Reviews.** Projects requiring preliminary review under Section 6-302, shall complete a preliminary review before an application is submitted to the city for formal review under Sections 6-203A, Review for Completeness, 6-205 Public Meetings, and 6-206, Public Hearing Review.
- C.      Concurrent Review of Applications for Same Project.** The applicant or Development Services Manager may elect to combine multiple applications for concurrent review when the applications are for the same project and the same

decision-making body is responsible for reviewing all of the applications related to the project. For example, the Zoning Administrator may review an application for a code interpretation concurrently with an application for a non-conforming use determination; and the Planning and Zoning Commission may review an application for Planned Area Development (PAD) approval concurrently with a variance application that relates to the PAD.

## **Section 6-203      Application Acceptance.**

- A.      Review for Completeness.** The Development Services Manager shall review the application for completeness, in conformance with this section. The city will not schedule a meeting or hearing date until the application is complete. If the applicant fails to submit the missing information within sixty (60) days of the first submittal, the Development Services Manager may notify the applicant that the application can not be accepted and a new application will be required for the proposed project. The Development Services Manager's decision is not subject to appeal; nor shall it be construed as denial of the application.
- B.      Complete Application.** A complete application is one which fulfills the following requirements:
1.      A completed original application form that is signed by the property owner or his or her authorized representative agent, or the Development Services Manager for applications initiated by the City Council. In lieu of signature by property owner, a letter of authorization shall substitute;
  2.      Application fee, payable to the City of Tempe in accordance with the fee schedule in effect at the time of application (see Appendix G);
  3.      The applicant for public hearings shall provide the current Maricopa County tax map(s) showing the subject property(ies) and all properties within three hundred (300) feet of the subject property(ies) and a list of the names and addresses of the owners of record. For projects with commercial, industrial or mixed-use zoning, applicants shall provide the names and mailing addresses of all tenants, within the subject property(ies). For projects containing more than one (1) parcel, or phases of a larger project, the three hundred (300) foot measurement shall be taken from the perimeter of the entire project (all phases). The Development Services Department will provide a list of recognized neighborhood and homeowner associations, within the vicinity of the project, for notification;
  4.      Plans, exhibits, studies, and/or other information required pursuant to Chapter 3, Applications;
  5.      A letter explaining the nature and intent of the proposed development and reasons justifying the request. References to the effects produced by the

request upon surrounding neighborhoods, and the city at large, should be included; and

6. Additional information such as development plans, elevations, Planned Area Development plans, landscape plans, traffic analysis impact studies, or other information directly related to the applicable Code standards, as deemed essential by the Development Services Manager, to evaluate the application for compliance with those criteria and standards.

- C. **Processing Application.** Processing of an application indicates only that the application is ready for review. The Development Services Manager may accept additional information from the applicant at the discretion of the Manager during the review process.

## **Section 6-204      Administrative Review.**

The steps in reviewing administrative applications are:

- A. **Preliminary Review Process** (as determined by the Development Services Manager). See Section 6-302.
- B. **Submit Application.** The applicant submits an application in accordance with Section 6-202.
- C. **Completeness Determination.** The Development Services Manager, or his or her designee, reviews the submittal for completeness. See Section 6-203.
- D. **Review.** City staff reviews the application and approves, approves with conditions, or denies the request.
- E. **Notice of Decision.** The Development Services Manager, or his or her designee, provides notice of the decision in writing to the applicant or the applicant's representative and owners of the subject property.
- F. **Appeal.** Any appeals of an administrative decision shall be filed no later than fourteen (14) calendar days after the date on which the decision was rendered. Such appeal shall be processed to the appropriate decision-making body. See Section 6-101.

## **Section 6-205      Public Meeting Review.**

The steps in reviewing public meeting applications are:

- A. **Preliminary Review Process** (as determined by the Development Services Manager). See Section 6-302.

- B. Submit Application.** The applicant submits an application in accordance with Section 6-202.
- C. Completeness Determination.** The Development Services Manager, or his or her designee, reviews the submittal for completeness. See Section 6-203.
- D. Schedule Public Meeting.** The Development Services Manager, or his or her designee, schedules and provides notice of a public meeting with the applicable decision body.
- E. Review and Public Meeting.** Staff reviews the application and provides comments to the Development Services Manager or his or her designee. City staff provides the comments to the decision-making body, who may approve, approve with conditions, or deny the application following a public meeting.
- F. Notice of Decision.** The Development Services Manager, or his or her designee, provides notice of the decision in writing to the applicant or the applicant's representative and owners of the subject property.
- G. Appeal.** Any appeals of a public meeting decision shall be filed no later than fourteen (14) calendar days after the date on which the decision was rendered. Such appeal shall be processed to the appropriate decision-making body. See Section 6-101.

## **Section 6-206      Public Hearing Review.**

The steps in reviewing public hearing applications are:

- A. Preliminary Review Process.** See Section 6-302.
- B. Submit Application.** The applicant submits an application in accordance with Section 6-202.
- C. Completeness Determination.** The Development Services Manager or his or her designee reviews the application for completeness. See Section 6-203.
- D. Neighborhood Meeting.** The applicant is responsible for conducting an informational neighborhood meeting. See Section 6-402.
- E. Schedule Public Hearing.** Staff schedules a public hearing with a decision-making body. See Section 6-101.
- F. Post Notice on Property.** Staff posts property with notice of hearing at least fifteen (15) calendar days prior to hearing date. See Section 6-404.
- G. Mail Notice.** At least fifteen (15) calendar days prior to the hearing, staff mails notice of the pending application to owners of property within three hundred (300)

feet of the subject site. Staff will also mail notices to neighborhood association(s) and home owners associations, in the area where the site is located. See Section 6-404C.

- H. Review.** Staff reviews the application and provides comments to the Development Services Manager, or his or her designee, who will then prepare a staff report in accordance with Section 6-406.
- I. Public Hearing.** A public hearing(s) is held before the decision-making body, as identified in Section 6-101. The decision-making body renders a decision on the application.
- J. Notice of Decision.** The Development Services Manager, or his or her designee, provides notice of the hearing body's decision in writing to the applicant or the applicant's representative and owners of the subject property.
- K. Appeal.** When the City of Tempe is the appellate body, appeals shall be filed within fourteen (14) calendar days from the date of the decision which is being appealed. When the Superior Court is the appellate body, appeals shall be filed within thirty (30) calendar days from the date of the decision which is being appealed.

## **Section 6-207 Legislative Review.**

For requirements related to City Council review, please refer to City Charter, Section 2.11, Action Requiring Ordinances in General, and Arizona Revised Statute 9-461.06.

## CHAPTER 3 – APPLICATIONS

<b>Section 6-301</b>	<b>Code Interpretations and Similar Use Rulings.</b>
<b>Section 6-302</b>	<b>Preliminary Review Process.</b>
<b>Section 6-303</b>	<b>General Plan Amendment.</b>
<b>Section 6-304</b>	<b>Specific Area Plan.</b>
<b>Section 6-305</b>	<b>Zoning Map and Code Text Amendment.</b>
<b>Section 6-306</b>	<b>Planned Area Development.</b>
<b>Section 6-307</b>	<b>Development Plan Review.</b>
<b>Section 6-308</b>	<b>Subdivisions, Lot Splits and Adjustments.</b>
<b>Section 6-309</b>	<b>Use Permit.</b>
<b>Section 6-310</b>	<b>Variances.</b>
<b>Section 6-311</b>	<b>Abatement.</b>
<b>Section 6-312</b>	<b>Shared Parking.</b>
<b>Section 6-313</b>	<b>Modify Approved Plan, PAD, Use Permit, or Condition of Approval.</b>
<b>Section 6-314</b>	<b>Security Plan.</b>

### **Section 6-301      Code Interpretations and Similar Use Rulings.**

- A. Purpose.** Any use not appearing in this code which is similar to, and not more detrimental than the uses permitted herein, as determined by the Zoning Administrator, may be permitted based on a code interpretation and similar use ruling.
- B. Procedure.** Code interpretations and similar use rulings are processed as administrative review decisions by the Zoning Administrator. Decisions by the Zoning Administrator may be appealed to the Board of Adjustment. (Please refer to the Development Services Department for application requirements.)
- C. Approval Criteria.** The decision-making body shall base its decision on the definitions and other provisions contained in this Code, relevant city policy, and/or any applicable State or Federal law or case law.



- D. **Record.** Code interpretations and similar use rulings shall be catalogued and kept in the Zoning and Development Code Appendix.

## **Section 6-302 Preliminary Review Process.**

- A. **Purpose.** The purpose of the preliminary review is intended to acquaint the prospective applicant or applicant's representative(s) with the requirements of this Code, the General Plan and other relevant city policies and regulations. Preliminary review is intended to be informative and identify potential issues. Applications must comply with the standards in effect at the time of application submittal.
- B. **Applicability.** The preliminary review is required for major development plans, PADs, and subdivisions, but is not required for single-family dwellings or structures that are accessory to a single-family dwelling. Minor development plans and exterior modifications to existing development may require preliminary review upon determination of the Development Services Manager. A preliminary review may also be held if requested by the prospective applicant or applicant's representative for any proposal.
- C. **Application Requirements.** The applicant or applicant's representative is responsible for providing information to the city that is sufficient to describe the proposed use and/or development. (Please refer to the Development Services Department for application requirements.)
- D. **Preliminary Review Conference.** Staff from the reviewing city departments and divisions will provide comments. After the plans have been compiled, staff will contact the applicant or applicant's representative to schedule a preliminary review conference, which shall be held at the Development Services Department by appointment. Staff will review the comments with the applicant or applicant's representative at the preliminary review conference and provide information on city code requirements, procedures, and other relevant city policies and regulations.

## **Section 6-303 General Plan Amendment.**

- A. **Purpose.** The General Plan is an evolving document that is designed to change based on community needs. The purpose of a General Plan amendment is to facilitate reasonable changes in effort to maintain a livable and sustainable urban environment that is sensitive to issues that impact where people live, learn, work and play.
- B. **Applicability.** There are two (2) types of amendments to the General Plan, amendments and major amendments. Any change to the maps or text of the General Plan, is an amendment to the General Plan. Any change determined by the Development Services Manager to be a major amendment has additional processing

requirements. A proposed plan or project would require a major amendment to the General Plan if any one (1) of the following apply:

1. The plan is a specific area plan, as provided in Section 6-304;
2. The plan or project results in significant alteration to or deviation from the Water Master Plan;
3. The plan or project results in significant alteration to or deviation from the Comprehensive Transportation Plan; and
4. The plan or project decreases the acreage of any projected land use at the time of application by the following criteria:
  - a. Residential land use by one percent (1%);
  - b. Open space land use by one percent (1%); or
  - c. Any other land use category by two percent (2%).

(For the acreage resulting in a major amendment, see the land use element chart of projected land uses, which is subject to update. Calculation will be made with the most updated data at the time of application.)

#### **C. Procedure.**

1. Application Submittal to Commission:
  - a. Amendments. Shall be processed to the Planning and Zoning Commission or Redevelopment Review Commission, as applicable, for at least one (1) public hearing, using the public hearing procedure in Section 6-206; and
  - b. Major amendments. Shall be processed to the Planning and Zoning Commission or Redevelopment Review Commission, as applicable, for two (2) or more public hearings, using the public hearing procedure. Hearings shall be in different locations to encourage community participation.
2. Application Forwarded to Council:
  - a. Amendments. Shall be presented to City Council during at least one (1) public hearing, for the amendment and resolution;
  - b. Major Amendments. Shall be presented to City Council for at least two (2) public hearings;
  - c. Final hearings on major amendments must be held at one (1) single public hearing in the calendar year that proposed amendments are made. This annual meeting shall be held in October, at a date to be determined by the Council; and

- d. Major amendments shall also be approved by an affirmative vote of at least two-thirds (2/3) of the City Council.
3. Final Hearing Notification Requirements. At least sixty days (60) before either an amendment or major amendment, staff shall transmit the proposal to the applicable commission and the City Council and submit a copy for review and comment to:
- a. The planning agency of Maricopa County;
  - b. Each municipality that is contiguous to the corporate limits of the city;
  - c. The regional planning agency within which the city is located;
  - d. The Department of Commerce or any other state agency that is subsequently designated as the general planning agency for the state;
  - e. Any person or entity that requests in writing to receive a review copy of the proposal; and
  - f. Notice of time and place of hearings and availability of relevant materials shall be:
    - i. Advertised by publication at least once, in a newspaper of general circulation in the city, at least fifteen (15) and not more than thirty (30) calendar days before the hearing;
    - ii. Posted on the website at least fifteen (15) and not more than thirty (30) calendar days before the hearing;
    - iii. Posted at the City Council Chambers and Clerks Office at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law;
    - iv. If modifying a map, then post property with dates, times and locations of the public hearings, and a summary of the amendment. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way or a public street or road for maximum visibility. Posting shall be done not less than fifteen (15) and not more than thirty (30) calendar days before the first hearing. It shall not be the responsibility of the city to maintain the notice once it has been placed on the subject property; and
    - v. If modifying a map, then mailed notification of public hearings shall be sent not less than fifteen (15) and not more than thirty (30) calendar days before the first hearing to:

- a. The applicant or representative and the owners of the subject property;
- b. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant; and
- c. The chairperson of the registered neighborhood association(s) and home owners association(s) in which subject property is located.

**D. Approval Criteria.** No General Plan amendment shall be approved unless it has substantial conformance with the criteria below, and any other criteria determined by the City Council.

- 1. Appropriate short- and long- term public benefits;
- 2. Minimal negative impacts on land use, water infrastructure or transportation;
- 3. Helps the city attain applicable objectives of the General Plan;
- 4. Provides rights-of-way, transit facilities, open space, recreational amenities or public art;
- 5. Potentially negative influences are mitigated and deemed acceptable by the City Council; and
- 6. Judgment of the appropriateness of the amendment with regard to market demands, and impacts on surrounding area, service, fiscal, traffic, historic properties, utilities and public facilities.

**State law reference** – ARS 9-461.06 Adoption and amendment of General Plan

## **Section 6-304      Specific Area Plan.**

**A. Purpose.** A Specific Area Plan (SAP) is a policy plan that amends the General Plan and may also be used as the basis to establish an overlay district through a zoning amendment. The SAP provides criteria and guidelines deemed necessary or desirable to provide specificity for planning in a particular area. An overlay district contains regulations that implement and enforce the SAP.

**B. Applicability.** SAPs may be initiated by the property owner(s) within an area requesting a SAP. The following criteria must be met:

- 1. Minimum of one hundred (100) contiguous acres to the nearest property line (including all rights-of-way, streets, alleys, parks and other publicly owned land);

2. Identified need for a SAP, such as special or unique local conditions warranting more detailed attention than offered by the General Plan; or problems that conventional planning techniques, or market forces have been unable to address; or perceptions of the area (noise, crime, traffic) that may impact desirability or quality of life of the area; and
3. Signatures of the private property owners supporting the need and initiation of a SAP must be submitted from thirty-three percent (33%) of the properties within the proposed plan area. Only one (1) owner's signature per property parcel is permitted.

**C. Procedure.** All planning, production and notification costs to be incurred by the applicant. Requests for staff assisted planning requires a request to Council for prioritization and funding. This section describes the procedures for developing a SAP, including public participation requirements.

1. Prior to creating a SAP:
  - a. At least thirty (30) days before initiation of a SAP process, a meeting shall be held in or near the subject area to inform interested persons of the possible initiation of a SAP and the procedures to be followed during preparation and review of the proposed plan;
  - b. At least fifteen (15) days prior to the meeting, mailed written notice shall be made to all property owners in and within three hundred (300) feet of the proposed area, (excluding streets, alleys and rights of ways), homeowners and neighborhood association chair persons, and applicable boards and commissions;
  - c. At least fifteen (15) days before the meeting, notice of the meeting shall be published once in a newspaper of general circulation and posted in the area proposed to be included in the SAP; and
  - d. Prior to initiating the SAP, the area must be defined and signatures of thirty-three percent (33%) of the properties must be collected as defined in Section 6-304B above.
2. Creating a SAP:
  - a. Collection of data and inventory of existing conditions such as population, facilities, services, open space, natural and cultural resources, real estate trends, etc.;
  - b. Identification of opportunities and constraints;
  - c. Notification of property owners in and within three hundred (300) feet of the area, homeowners and neighborhood association chair persons,

businesses, schools, civic and faith groups within the area will be invited to attend an issue identification and visioning meeting;

- d. Additional meetings may be held as necessary to develop the document. Attendance and comments from all meetings must be documented as part of the public process;
- e. Create document with goals, objectives and implementation strategies following format of General Plan; and
- f. Print and distribute plan at a final meeting publicized through mailing and advertising process used in subsection 1 above.

3. Processing a SAP:

- a. The applicant shall submit the application, pre-plan signatures (33% of all properties) and all comments received to the Planning and Zoning Commission or Redevelopment Review Commission as applicable for their review and recommendation;
- b. A SAP is a major amendment to the General Plan. Such amendments must have two (2) or more public hearings before the appropriate commission and the City Council;
  - i. See Section 6-303C for procedures for major amendments to the General Plan;
  - ii. See Section 6-404 for notice for public hearings;
  - iii. See Section 6-502A for public hearing process;
  - iv. The final hearing must be scheduled with all other major amendments at one hearing held in the month of October, at a date determined by the Council;
  - v. The City Council may adopt the plan concurrent with the overlay district (if one is created). Overlay districts with a SAP are processed as zoning amendments (see Section 6-305 for zoning application requirements); and
- c. If the owners of twenty percent (20%) or more of the total private properties in the SAP area, combined with the private properties within one hundred fifty (150) feet from the SAP boundary, file a protest, the SAP shall be terminated. Written protests must be submitted within fourteen (14) days of Commission action.

**D. Approval Criteria.** A SAP must meet the following criteria for approval:

1. Benefits the community by promoting public health, safety, welfare, aesthetics and efficient use of land within and adjacent to the planning area;
  2. Minimal negative impacts to the balance of the city;
  3. Substantial compliance with the General Plan;
  4. Technically feasible; and
  5. Supermajority affirmative vote two-thirds (2/3) of City Council.
- E. Amendment.** Applicants for amendments must demonstrate ownership, or authorization to act on behalf of the owner of the property that is directly affected by the portion of the plan proposed for amendment. Specific Area Plans may be amended as part of the General Plan, see Section 6-303 for General Plan amendment process.

### **Section 6-305      Zoning Map and Code Text Amendment.**

- A. Purpose.** The regulations and boundaries of zoning districts set forth in this Code may be amended whenever deemed necessary to best serve the public interest, and the health, comfort, convenience, safety, and general welfare of the city.
- B. Applicability.** Amendments to the text or zoning map of this Code shall not be made except through the adoption of an amending code by the City Council and following the procedure prescribed in this Code.
- C. Procedure.** An application for zoning map or code text amendment shall be made as a written request submitted to the Development Services Manager. The written request shall specify the nature of the amendment with pertinent details to explain or support the request. Requests for zoning map or code text amendments shall be taken to the Planning and Zoning Commission or Redevelopment Review Commission by the owner or owners of real property situated in the city or by any officer, department, board or commission of the city, or by the City Council, under its own motion. In addition the following are required:
1. Applications for the following zoning districts shall require simultaneous processing of a PAD: R1-PAD, PCC-1, PCC-2, RCC, MU-1, MU-2, MU-3, and MU-4.
  2. Applications for CSS and all multi-family zoning districts shall require simultaneous processing of a development plan.
  3. Planning and Zoning Commission or Redevelopment Review Commission Review and Recommendation. The commission shall review the request and make a recommendation to City Council in a public hearing. The recommendation of approval of any amendment by the commission shall be

based on a finding of consistency and conformance with the General Plan and may include conditions of approval.

4. **City Council Review and Approval Criteria.** Approval by the City Council of an amendment shall be based on a finding that the zoning amendment is in the public interest and is consistent and conforms with the General Plan. Any approval may be subject to such conditions as the council deems applicable in order to fully carry out the provisions and intent of this Code.

**State law reference**—Zoning amendments, procedures, A.R.S. §9-462.01, §9-462.03, §9-462.04.

## **Section 6-306      Planned Area Development.**

**A. Purpose.** Planned Area Developments (PADs) allow an applicant to establish development rights, i.e., uses, variances, etc., and develop a project in phases. PADs are not subdivisions and are not intended for the dedication of right-of-way.

**B. Applicability.**

1. Applications for the following zoning districts shall require simultaneous processing of a PAD: R1-PAD, PCC-1, PCC-2, RCC, MU-1, MU-2, MU-3, and MU-4; and
2. Projects in all other zoning districts may request a PAD.

**C. Procedure.**

1. PADs shall be processed to the Planning and Zoning Commission (PZ) or Redevelopment Review Commission (RRC), as applicable, using the public hearing procedure. PADs shall also be processed to the City Council, using the public hearing procedure, when part of a zoning map amendment or appeal of PZ or RRC action;
2. **Modifications.** Once a PAD request has been approved and recorded, it can be modified or amended per Section 6-313. Questions as to procedure for modifications to existing PADs shall be determined by the Zoning Administrator;
3. **Recordation.** Recordation shall occur per Section 6-306E.; and
4. **Design Review Board (DRB).** DRB approval is required prior to issuance of building permits.

**D. Approval Criteria.** Approval of a PAD requires conformance with the standards in subsections 1-4, below.

1. The allowable land uses in Part 3;



2. The development standards in Part 4;
  3. Any applicable overlay zone provisions in Part 5; and
  4. The decision-making body may impose reasonable conditions to ensure conformance with these provisions.
- E. Recordation.** After approval by the decision-making body, the applicant shall complete all required revisions to the PAD and return it to the Development Services Department (DSD). The DSD shall place the PAD on record in the office of the county recorder of Maricopa County. Recordation shall occur within one (1) year of the approval by the decision-making body. Failure to be recorded within one (1) year of approval, when due to the applicant's request, action or inaction, shall render such PAD null and void. The PAD shall not be void if, in the opinion of the council, the applicant is making a good faith effort toward recordation or the applicant has applied for an extension under Section 6-901.
- F. Property Owners Associations.** If a property owners association(s) is required, the covenants and restrictions shall include all applicable requirements under the Tempe City Code, and shall be reviewed by the City Attorney and Development Services Manager to determine if the association will remain responsible for maintaining common areas within the development. Such covenants and restrictions shall be recorded.

## **Section 6-307 Development Plan Review.**

- A. Purpose.** Development plan review is intended to encourage, protect and enhance the functional and attractive appearance of the City of Tempe. The city recognizes that the creation of a desirable environment throughout the city for residents, businesses, and industry is a prime requisite for the preservation of property values; for the development of functional and compatible uses and buildings; and for the preservation of public health, safety and general values.
- B. Applicability.** Development plan applications shall be reviewed as followed:
1. Major Development Plan Review. Applies to all new development and expansions over five thousand (5,000) square feet gross floor area, except single-family homes not included in a PAD and two (2) and three (3) family dwellings.
  2. Minor Development Plan Review. Applies to expansions up to five thousand (5,000) square feet of gross floor area or twenty percent (20%) of the existing building area, which ever is less; and two (2) and three (3) family dwellings.
- C. Procedure.** Major development plan reviews are processed as public meetings through the Design Review Board (DRB) or Redevelopment Review Commission

(RRC) when located in the RRC boundary area. Minor development plan reviews are processed as administrative review decisions through the Development Services Manager. Appeals to minor development plans shall be processed through the DRB or RRC as applicable.

**D. Approval Criteria.** Development plan approval requires conformance with the standards and criteria in subsections 1 and 2, below. The decision-making body shall use the following criteria in evaluating the development plan.

1. The following design criteria:
  - a. The placement of buildings reinforces and provides variety in the street wall, maximizes natural surveillance and visibility of pedestrian areas (building entrances, pathways, parking areas, etc.), enhances the character of the surrounding area, and facilitates pedestrian access and circulation;
  - b. Shade for energy conservation and comfort is an integral part of the design;
  - c. Materials are of superior quality and compatible with the surroundings;
  - d. Buildings and landscape elements have proper scale with the site and surroundings;
  - e. Large building masses are broken into smaller components that create a human-scale as viewed from the sidewalk;
  - f. Buildings have a clear base and top, as identified by ground floor elements, roof forms, and detailing;
  - g. Building facades have architectural detail and contain windows at the ground level to create visual interest and to increase security of adjacent outdoor spaces by maximizing natural surveillance and visibility;
  - h. Special treatment of doors, windows, doorways and walkways (proportionality, scale, materials, rhythm, etc.) contributes to attractive public spaces;
  - i. On-site utilities are placed underground;
  - j. Clear and well lighted walkways connect building entrances to one another and to adjacent sidewalks;
  - k. Accessibility is provided in conformance with the Americans With Disabilities Act (ADA);
  - l. Plans take into account pleasant and convenient access to multi modal transportation options, and support the potential for transit patronage;

- m. Vehicular circulation is designed to minimize conflicts with pedestrian access and circulation, and with surrounding residential uses. Traffic impacts are minimized, in conformance with city transportation policies, plans, and design criteria;
  - n. Safe and orderly circulation separates pedestrian and bicycles from vehicular traffic. Projects should be consistent with the Tempe Pedestrian and Bicycle Facility Guidelines, contained the Comprehensive Transportation Plan;
  - o. Plans appropriately integrate crime prevention principles such as territoriality, natural surveillance, access control, activity support, and maintenance;
  - p. Landscaping accents and separates parking, buildings, driveways and pedestrian walkways;
  - q. Signs have appropriate scale, color, and design based on location, site use, adjacent buildings and signs; and
  - r. Lighting is compatible with the proposed building(s) and adjoining buildings and uses, and does not create negative effects.
2. The decision-making body may impose reasonable conditions to ensure conformance with these provisions.

**E. Time Limitations.** Development plan approval shall be void if the development is not commenced or if a building permit has not been obtained, whichever is applicable, within twelve (12) months of such granting or within the time stipulated by the decision-making body.

## **Section 6-308      Subdivisions, Lot Splits and Adjustments.**

**A. Purpose.** The purpose of this section is to provide for the orderly growth and harmonious development of the city; to insure adequate traffic circulation through coordinated street, transit, bicycle and pedestrian systems with relation to major thoroughfares, adjoining subdivisions, and public facilities; to achieve individual property lots of reasonable utility and livability; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to insure consideration for adequate sites for schools, recreation areas, and other public facilities; and to promote the conveyance of land by accurate legal description and plat.

**B. Applicability.**

1. Subdivision. Subdivision applies to improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four (4) or more lots, tracts or parcels of land. Also, if a new street is involved, any such property which is divided into two (2) or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. Subdivision also includes any condominium, cooperative, community apartment, townhouse or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided or as defined in A.R.S. § 9-463.02, as it may be amended.
2. Lot Split. Land splits apply to the division of improved or unimproved land whose area is two and one-half (2 1/2) acres or less into two (2) or three (3) tracts or parcels of land for the purpose of sale or lease or as defined in A.R.S. § 9-463.
3. Lot Line Adjustment. Lot line adjustments apply to property line modifications within a recorded subdivision plat.

**C. Procedure.**

1. Subdivision.
  - a. Preliminary Subdivision Plat. Shall be processed through the Planning and Zoning Commission for review and recommendation to the City Council at a public meeting.
  - b. Final Subdivision Plat. Shall be processed to the City Council for approval at a public meeting.
  - c. Amended Final Subdivision Plat. Shall be processed to the City Council for approval at a public meeting.
2. Lot Split. Requires an administrative approval by the Development Services Manager (DSM). Appeals of the DSM decision shall be appealed to the City Council within fourteen (14) days of action.
3. Lot Line Adjustment. Requires approval by the City Council at a public meeting.

**Reference**—Subdivisions, City Code, Chapter 30.

**D. Approval Criteria.** See City Code Chapter 30, Subdivisions.

## **Section 6-309      Use Permit.**

- A. Purpose.** The purpose of Section 6-309 is to ensure the orderly use of land in conformance with the General Plan and applicable city standards where uses are proposed that may require special limitations or conditions to provide compatibility with other uses.
- B. Applicability Based on Square Feet of Use.** For use permits that are based on the square footage devoted to a particular use, the square footage will be taken as the gross floor area for the use requiring the use permit.
- C. Procedure for Use Permits Granted by the Hearing Officer or Board of Adjustment.** Except where review by the Redevelopment Review Commission applies, the following requests for use permits shall be taken to the Hearing Officer or Board of Adjustment for a public hearing, and approval, denial, or approval with conditions:
1. All use permits required in all residential districts (See Section 3-102);
  2. Use permits required for any bar which occupies less than four thousand five hundred (4,500) square feet in gross floor area;
  3. Use permits required for any other use which occupies less than ten thousand (10,000) square feet in gross floor area in all commercial and mixed-use districts except PCC-1 and PCC-2 (See Section 3-202);
  4. Use permits required for any use occupying less than twenty-thousand (20,000) square feet in gross floor area in any office/industrial district (See Section 3-302);
  5. The Zoning Administrator may direct that a request defined by subsections 1 through 4 immediately above be heard instead by the Planning Commission or City Council based on a review which includes but is not limited to the following factors:
    - a. Previous decisions by the city regarding the site on which the proposed use is located;
    - b. The probable impact of the requested use on its immediate surroundings; or
    - c. The consistency of the requested use with the projected land uses, policies and principles of the General Plan; and
  5. When a use permit is combined with a variance both shall be heard by the same decision-making body.

**D. Procedure for Use Permits Granted by the Planning and Zoning Commission, Redevelopment Review Commission or City Council.** Except where review by the Redevelopment Review Commission applies, the following requests for use permits shall be taken to the City Council for a public hearing, and approval, denial, or approval with conditions:

1. All use permits required in PCC-1, PCC-2, RCC, and CC;
2. Use permits required for any bar which occupies four thousand five hundred (4,500) square feet or more in gross floor area;
3. Use permits required for any other use in a commercial or mixed-use zoning which occupies ten thousand (10,000) square feet or more in gross floor area;
4. Use permits required for any use that occupies twenty thousand (20,000) square feet or more in gross floor area in every industrial zone. For use permits to exceed the allowed percent of retail in an industrial district, the square footage devoted to retail will be taken as the gross floor area for the use requiring the use permit;
6. The Zoning Administrator may direct that a request defined by subsections 1 through 4 immediately above be heard instead by the Hearing Officer or Board of Adjustment based on a review which includes but is not limited to the following factors:
  - d. Previous decisions by the city regarding the site on which the proposed use is located;
  - e. The probable impact of the requested use on its immediate surroundings; or
  - f. The consistency of the requested use with the projected land uses, policies and principles of the General Plan; and
6. When a use permit is combined with a variance both shall be heard by the same decision-making body.

**E. First Amendment.** A use permit request for any activity that is protected by the First Amendment shall be heard by the decision-making body at the next regularly-scheduled public hearing complying with legal notice requirements following submittal of a complete application for such a permit. No continuances or other delays in such processing may occur without the concurrence of the applicant for such permit, provided that there is sufficient time to complete any public notification requirement. If approved, the use shall be commenced within one (1) year.

**F. Approval Criteria.**

1. A use permit shall be granted only upon a finding by the decision-making body, that the use covered by the permit, the manner of its conduct, and any

building which is involved, will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirements, or standards prescribed therefor by this Code.

2. In arriving at the above determination, the following factors shall be considered, but not be limited to:
  - a. Any significant increase in vehicular or pedestrian traffic;
  - b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
  - c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which, is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;
  - g. Compatibility with existing surrounding structures and uses; and
  - h. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public.
3. The decision-making body may impose reasonable conditions to ensure conformance with these provisions.

**G. Burden of Proof.** The burden of proof for satisfying the aforementioned requirements shall rest with the applicant. A refusal of a use permit shall not be interpreted as the denial of a right, conditional or otherwise.

**H. Conditions.** Any use permit granted may be subject to conditions the decision-making body deems applicable in order to fully carry out the provisions and intent of the Code, including, but not limited to:

1. Limit the hours, days, place and/or manner of operation;
2. Require site or architectural design features that minimize impacts due to removal of vegetation, noise, vibration, exhaust/emissions, light, glare, erosion, water quality impacts, odor and/or dust;
3. Require landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
4. Designate the size, number, location and/or design of vehicle access points or parking areas;
5. Require additional setbacks and planting if deemed necessary; and

6. Limit the building height, size or lot coverage, and/or location on the site.

**I. Effect of Use Permit.**

1. The use permit is valid and operable only for the specific use as granted and subject to any specified time limit. No use may be modified, changed, altered or increased in intensity, in a manner that conflicts with the use permit and/or required conditions of approval, without approval of a new use permit.

**J. Use Modifications.** See Section 6-313.

**K. Use Permit Time Limitation.** Use permits shall be void if the use is not commenced within twelve (12) months of such granting or within the time stipulated by the decision-making body.

**L. Exceptions and Special Use Permit Provisions.** Outdoor retailing related to special sporting events. Outdoor displays and outdoor retailing of merchandise related to special sporting events, as defined below, may be allowed on commercially used property in the CSS, PCC-1, PCC-2, CC, and RCC districts on a temporary basis, and without a use permit, if:

1. A temporary sports paraphernalia vending permit has been issued by the Management Services Department, after approval by the Development Services and Public Works Departments, for a fee established by the City Council;
2. The permittee is in compliance with all regulations related to such permit and all applicable codes and laws;
3. Each temporary permit is valid for a period not to exceed thirty (30) days, one of which days includes the date of a special sporting event as defined herein. The permit must be posted on the site and must be available for inspection at all times during operation;
4. Merchandise is limited to tangible personal property related to the special sporting event and shall comply with all applicable licensing, trademark, copyright or other requirements of law. It may not include food or beverage products; and
5. The applicant submits a written application and development plan for review and approval by the city, which shall include, but not be limited to layout, location, size, height, signage, description of merchandise, date and name of the special sporting event, off-street parking and traffic plan, utility services to be utilized or required, improvements and structures on the site, approval of property owner for the intended use, the permit fee and sales tax license fee, and other information requested by the city. In reviewing applications, the city may utilize any acceptable criteria for approval of the application and development plan, including such criteria as those utilized for issuance of use, signs, traffic or right-of-way permits, and other vending or licensing



standards currently established by city code and administration. Except for city-owned property, the following requirements apply:

- a. Display or retail activities shall be conducted at least ten (10) feet away from any public property or city right-of-way;
- b. No traffic or sight obstruction or restriction is permitted;
- c. Display or retail activity may only occur on an improved area adjacent to an existing permanent structure on the site. "Improved area" is defined as an area having a surface of asphalt, concrete, crushed rock, gravel, masonry or wood, maintained free of all vegetation and contained within a permanent curb or border, unless otherwise approved by the city;
- d. No display or retail activity may occur upon or interfere with landscaping at or adjacent to the site;
- e. A copy of approved tent permit, if applicable, and any other required city permits or licenses;
- f. No permit will be issued for, nor will outdoor display or retailing be allowed on, any property abutting or within the area bounded by Priest, McClintock, Rio Salado Parkway and the Red Mountain Freeway, in the Rio Salado Overlay District, unless otherwise approved by the city;
- g. No outdoor retail or display is permitted during or within the perimeters of the New Year's Eve Block Party or the Super Bowl Street Spectacular unless approved as part of the special event permit for those events;
- h. Display or retail area shall be kept neat, clean and hazard free during any hours of operation. Permittee is responsible for litter pickup and disposal within a fifty (50) foot circumference of the display/retail activities; and
- i. Special sporting event means the Fiesta Bowl, the Super Bowl, the playoffs for professional basketball, football or baseball, or any other special sporting event so designated by the City Council.

**City code reference**—See TCC §5-2, special event permits.

## **Section 6-310 Variances.**

- A. **Purpose.** This section provides for relief from the standards of this Code when needed because of circumstances applicable to a property, including its size, shape, topography, location or surroundings, where the strict application of this Code would deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.

- B. Applicability.** Variances are applicable to quantified standards (e.g., setbacks, height, lot areas, dimensions, etc.) and non-quantified standards. Variances are not applicable to guidelines as specifically identified in this Code. Any variance granted shall not:
1. Make any changes in the uses and densities permitted in any zoning classification or zoning district;
  2. Be for the purpose of rectifying a special circumstance, which was self-imposed by the property owner or applicant; or
  3. Allow relief from any item expressly prohibited by this Code.
- C. Procedure.** Requests for variances from the terms of this Code shall be processed as a public hearing procedure to the decision-making body as provided in Section 6-101.
- D. Decision-Making Bodies.** The Hearing Officer, Board of Adjustment, Planning and Zoning Commission, Redevelopment Review Commission, and City Council may decide variance requests. When a use permit is combined with a variance, both shall be heard by the same decision-making body.
- State law reference**—Variances, power to grant, A.R.S. §9-462.06.
- E. Approval Criteria.** A variance shall not be authorized unless the decision body finds upon sufficient evidence:
1. That there are special circumstances or conditions applying to the land, building or use referred to in the application;
  2. That authorizing the variance is necessary for the preservation and enjoyment of substantial property rights;
  3. That authorizing the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general; and, if applicable
  4. That the applicant for a sign variance has received development plan approval (i.e., contingent upon variance approval) prior to a decision being made on the variance.
- F. Conditions of Approval.** Any variance granted may be subject to such conditions deemed applicable by the decision-making body as will assure that the adjustment authorized shall not be detrimental to other properties in the vicinity and zoning district in which such property is located. Variances shall become void if the subject property does not conform to all conditions, requirements, and standards prescribed by the decision-making body as a condition for approval of the variance. See also, Section 6-902, Revocation of a Permit/Approvals.

- G. Variance Time Limitations.** Variances shall be void if the use is not commenced or if a building permit has not been obtained, whichever is applicable, within twelve (12) months of such granting or within the time stipulated by the decision-making body. The time period for a variance may be extended in conformance with Section 6-901, and shall only be renewed upon approval of a new variance application.

### **Section 6-311 Abatement.**

- A. Purpose.** Abatements shall remove code violations from property.
- B. Applicability.** Refer to Tempe City Code, Chapter 21.
- C. Procedure.** Abatements are processed through the Hearing Officer as a public hearing process.

### **Section 6-312 Shared Parking.**

- A. Purpose.** Shared parking allows for different uses on one site to share parking, there by increasing flexibility, use, building design and other development plan criteria.
- B. Applicability.** Any commercial, industrial, civic, or mixed-use project may request approval of alternative parking space requirements using a parking demand study. The application procedures, methodology, specifications, and approval criteria for parking demand studies are provided in the Appendix F. See also, Section 4-604.
- C. Procedure.** Shared parking applications shall be processed using the administrative review procedure through the Development Services Manager.
- D. Approval Criteria.** A shared parking model shall be reviewed for compliance with the standards of Section 4-604 (See Appendix F, Shared Parking Model).

### **Section 6-313 Modify Approved Plan, PAD, Use Permit, or Condition of Approval.**

- A. Purpose.** This section allows an applicant to modify an approved plan or condition of approval when a project needs change.
- B. Applicability.** This section applies to all types of applications approved under this Code.
- C. Procedure.** There are three (3) types of modification procedures as follows:

1. Minor Modifications to Approved Plans. Minor modifications are processed through an administrative review by the Development Services Manager. Minor modifications include:
  - a. An increase in the floor area proposed for non-residential use by less than ten percent (10%) where previously specified, unless such increase creates a variance;
  - b. A reduction of less than 10 percent (10%) of the area reserved for landscaping, open space, or outdoor living area, unless such reduction creates a variance;
  - c. A change to specified setback, building height, lot coverage or other quantitative requirements established in a PAD by less than 10 percent (10%); or
  - d. Changes similar to those listed in subsection (a) through (c), that are not likely to have an adverse impact on adjoining properties, as determined by the Development Services Manager.
2. Major Modifications to Approved Plans. A major modification is a significant change that exceeds the threshold(s) provided for a minor modification under 6-313C1. Major modifications shall be processed as public hearing applications. The hearing body shall be the same as the hearing body that made the original decision of approval.
3. Minor Modifications to Conditions of Approval. A minor modification is one that does not change the basic intent of the condition as determined by the Development Services Manager.
4. Major Modifications or Elimination of Conditions of Approval. A major modification changes the basic intent of the original condition as determined by the Development Services or eliminates the condition. Major modifications shall be processed through the original decision-making body.

#### **D. Approval Criteria.**

1. Minor Modifications. Minor modifications are administrative decisions and may be approved by staff when they meet the basic thresholds defined in this section, and when approval does not cause a violation of any provision of this Code.
2. Major Modifications. The approval criteria for major modifications are the same as for the original decision.
3. Elimination of Conditions of Approval. A request to remove condition(s) of approval shall only be granted if the decision-making body determines that:

- a. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of conditions; or
- b. The condition could not be implemented because it is beyond the reasonable control of the applicant and the modification will not require a significant modification of the original decision; or
- c. The circumstances have changed to the extent that the condition(s) is no longer needed or warranted; or
- d. A different condition(s) would better accomplish the purpose of the original condition.

### **Section 6-314      Security Plan.**

- A. Purpose.** The purpose of approving a security plan is to protect the public health, safety, and welfare through crime prevention measures that are tailored to proposed land uses.
- B. Applicability and Procedure.** Prior to commencement of any of the following uses, a security plan must be approved in accordance with Chapter 11, Article III of Tempe City Code:
  - 1. Bars, cocktail lounges, taverns, discotheques, nightclubs and similar businesses;
  - 2. Adult-oriented businesses;
  - 3. Recreational or amusement businesses, including both indoor and outdoor activities, including pool halls and video arcades;
  - 4. Entertainment as accessory to restaurant facilities, bars or similar establishments;
  - 5. Hotels, motels;
  - 6. Convenience stores; and
  - 7. Any other use determined by the Development Services Manager or the Tempe Police Department to be similar to a use listed immediately above in 1-6.

## CHAPTER 4 – PUBLIC NOTICE AND STAFF REPORTS

- Section 6-401      General Provisions.**
- Section 6-402      Neighborhood Meetings.**
- Section 6-403      Notice for Public Meetings.**
- Section 6-404      Notice for Public Hearings.**
- Section 6-405      Notice of Appeals.**
- Section 6-406      Staff Reports.**

### **Section 6-401      General Provisions.**

- A.      Mailed Notices.** Notices mailed under provisions of this Code shall be mailed to property owners and neighborhood/homeowner associations, and tenants (if required) within the notification area as defined in Section 6-401B. The applicant is responsible for mailing neighborhood meeting notices (Section 6-402), and the city is responsible for mailing all other public notices under this Code (Section 6-404). The city is not responsible for receipt of mailed notices.
- B.      Notification Area.** The boundary of the subject property, shall be used in determining the geographic area to be notified. For projects containing more than one parcel, or phases of a larger project, the three hundred (300) foot measurement shall be taken from the perimeter of the entire project (all phases). The Development Services Department will provide a list of recognized neighborhood and homeowner associations, within the vicinity of the project, for notification.

### **Section 6-402      Neighborhood Meetings.**

- A.      Purpose.** The purpose of the neighborhood meeting is to provide a means for the applicant, surrounding residential neighbors, and registered neighborhood and homeowner's association representatives to review a preliminary development proposal and solicit input and exchange information about the proposed development. This preliminary meeting is intended to result in an application that is responsive to neighborhood concerns and to expedite and lessen the expense of the review process by avoiding needless delays, appeals, remands or denials. The applicant is responsible for all costs associated with the neighborhood meeting.
- B.      Applicability.** A neighborhood meeting is required for the following types of applications when located within three hundred (300) feet of a residential use:

1. Use permits;
  2. Variances;
  3. Development plans, when a public hearing is required;
  4. Planned Area Developments;
  5. Major modification to an approved plan or condition of approval (when original approval made at a public hearing);
  6. Zoning map amendments; and
  7. General Plan map amendments.
- C. Meeting Schedule.** The applicant is required to hold one (1) meeting, prior to the first hearing on an application for a specific site, but may hold more if desired. The required meeting shall be held at least fifteen (15) days before the first hearing on the application.
- D. Meeting Location.** Neighborhood meetings shall be held at a location near the proposed development site. The meeting shall be held on a weekday evening, or weekends at any reasonable time and in a publicly accessible location.
- E. Notification Requirements.** Notice of the meeting shall be provided by the applicant as follows:
1. Posting not less than thirty (30) calendar days prior to the date of neighborhood meeting, a notice of the date, time and place and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a public street or road. It shall not be the responsibility of the applicant or the city to maintain the notice once it has been placed on the subject property. The Development Services Department will supply the sign(s) at cost to the applicant;
  2. Mailing a notice not less than thirty (30) calendar days prior to the date of the neighborhood meeting to:
    - a. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant;
    - b. The chairperson of the registered neighborhood association(s) and home owners association(s) within the vicinity of the project; and
    - c. All tenants, within the boundary of the subject property(ies), for projects with commercial, industrial or mixed-use zoning districts.

- F. Meeting Summary.** The applicant shall submit to the Development Services Department before the first hearing on the matter a summary of the issues and discussions from the meeting and the meeting notes.

### **Section 6-403 Notice for Public Meetings.**

- A. Purpose and Applicability.** The purpose of the public meeting is to provide a means for the Design Review Board to receive input from the public. See Section 1-307C3.
- B. Agenda as Notice of Meeting.** Agendas for all public meetings shall be posted at City Hall at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law.
- C. Notice of Decision.** Written notice of the decision made by the decision-making body in a public meeting shall be provided to the applicant and property owner (if different) and made available for public inspection at the Development Services Department.

### **Section 6-404 Notice for Public Hearings.**

- A. Public Notice.** Public hearings shall be preceded by public notice in accordance with this section and Arizona open meeting law. Public hearings for General Plan amendments have additional notification requirements, see Section 6-303 General Plan Amendment. When multiple applications are under review for the same project, the city may simultaneously issue notice for multiple applications. Such notice may be given in the initial posting and of the initial hearing and any subsequent hearing.
- B. Agenda.** Upon receiving a complete application for action requiring a public hearing under this Code, the Development Services Manager shall place the request upon the next available agenda for a regular meeting of the decision-making body.
- C. Notification Requirements.** The Development Services Department or the City Clerk shall issue public notices for all types of hearings under this Code as follows:
1. Posting the agenda at City Hall at least twenty-four (24) hours prior to such meetings, in accordance with Arizona open meeting law;
  2. Posting not less than fifteen (15) calendar days prior to the dates of public hearings, a notice of the date, time and place of each public hearing and a summary of the request. Such notice shall be clearly legible and wherever possible, placed adjacent to the right-of-way of a public street or road. It shall not be the responsibility of the city to maintain the notice once it has been placed on the subject property;



3. Submitting for publication in the official newspaper the hearing notice, at least once, fifteen (15) days prior to the public hearing; and
4. Mailing a hearing notice not less than fifteen (15) calendar days prior to the date of each hearing to:
  - a. The applicant or representative and owners of the subject property;
  - b. All property owners of record within three hundred (300) feet of the subject property which are included on the mailing list submitted by the applicant;
  - c. The chairperson of the registered neighborhood association(s) and home owners association(s) within the vicinity of the project;
  - d. All tenants, within the boundary of the subject property(ies), for projects with commercial, industrial or mixed-use zoning districts; and
5. If notification is required at the City Council, the City Clerk shall submit for publication in the official newspaper the request, at least once, fifteen (15) days prior to the meeting. If a Code amendment is involved, the City Clerk shall comply with the requirements of the City Charter.

**D. Content of Public Hearing Notice.** Public hearing notices issued under Section 6-404C. shall contain:

1. The name of the applicant or owner;
2. A description of the subject property reasonably sufficient to inform the public of its location;
3. A concise description of the proposed development or use;
4. The designation of the hearing body; and
5. The time, date and place of the hearing.

**E. Decision Notice.** Written notice of the decision of the hearing body shall be provided to the applicant and property owner (if different). The notice of decision shall contain a brief summary of the decision and conditions of approval, if any.

## **Section 4-405 Notice of Appeals.**

Notice of an appeal of a public meeting or public hearing shall be provided in the same manner as the original meeting or hearing.

## **Section 6-406      Staff Reports.**

- A.    Staff Reports for Boards and Commissions.** After any such request, as provided for in this Code has been placed on an agenda, the Development Services Department shall prepare a written report for the decision-making body that includes the following information:
1.     The name of the applicant or initiating party;
  2.     A description of the subject property or amendment, including any maps, drawings etc.;
  3.     A statement of the proposed request and any history pertinent to such request or property;
  4.     A statement of the observations of the personal inspection of the subject property and surrounding area; and
  5.     A recommendation for disposition of the request.
- B.    Staff Reports for City Council.** Any request forwarded to the City Council shall be transmitted to the City Clerk for inclusion on the agenda of a regular meeting of the City Council. A report shall accompany the request and include items in Section 6-406A1-5 and the following information:
1.     A concise statement of history and facts on the processing of the request by the Development Services Department and the public hearing(s) held by the Planning and Zoning Commission, Redevelopment Review Commission, or public meeting held by the Design Review Board;
  2.     The findings made by the above noted Boards or Commissions and the action taken; and
  3.     Any other pertinent documents and maps, as well as other information deemed necessary by the City Clerk or Development Services Manager.

## CHAPTER 5 – PUBLIC MEETINGS AND PUBLIC HEARINGS

**Section 6-501 Purpose.**

**Section 6-502 Rules of Procedure.**

**Section 6-503 Record.**

**Section 6-501 Purpose.**

This chapter provides procedures for public meetings and public hearings. It is intended to provide an efficient and effective means of public review on land use and development decisions made by the city. The provisions set forth in this chapter also are intended to encourage public dialogue and comment that is relevant to the applicable approval.

**Section 6-502 Rules of Procedure.**

Public meetings and hearings shall be conducted in accordance with Section 6-502 and any rules of procedure adopted by the hearing body, so long as these procedures do not conflict.

**A. Procedure.** The following procedures apply to all public meetings and public hearings, except as provided for zoning amendment protests under Section 6-502C:

1. Call for the request as stated on the agenda and announce that any person believed to be affected by the request may appear and will be heard, in person or by his or her representative;
2. Hear the report and recommendation submitted by the Development Services Department;
3. Time Limits. The decision-making body may set reasonable time limits for oral presentations. The decision-making body may also determine not to receive cumulative, repetitious, immaterial, derogatory or abusive testimony. Persons may be required to submit written testimony in lieu of oral if the decision-making body determines that a reasonable opportunity for oral presentations has been provided;
4. Hear a presentation by the applicant(s) describing the manner in which the proposal is consistent with city plans, policies, and codes;
5. Hear the relevant comments by the public regarding the application;
6. Hear the response to the public comments and a summary statement by the applicant;

7. The presiding officer may allow further comment, exhibits, and other evidence to be filed as part of the record of the meeting/hearing; and
8. Hold any pertinent discussion necessary for clarification or additional information.

**B. Decision.** Following discussion related to the application or comments received during the public meeting/hearing, the decision-making body will approve, approve with conditions, continue, or deny the application. In making the decision, consideration shall be given to the facts presented. The findings of fact justifying the decision shall be noted for the record. Decisions made under the provisions of this Code are effective on the date of approval (unless conditioned otherwise), except for those decisions subject to referendum.

**C. Zoning Amendment Protest.** The following procedure shall apply when a zoning amendment is protested:

1. In the event that the owners of at least twenty percent (20%) of the following properties file a protest in writing against a proposed amendment, with the City Clerk prior to the time of or at the public hearing of the City Council, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council:
  - a. The area of the lots included in a proposed change; or
  - b. The area of adjacent properties extending one hundred and fifty (150) feet from any side or rear property line of the subject property.
2. The area of properties directly opposite thereto extending one hundred fifty (150) feet from the street frontage of the opposite lots. Proposed amendments shall require a favorable vote of three-fourths (3/4) of all members of the City Council to become effective if a valid protest is filed in writing against the proposed amendment.
3. If any members of the council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the council, provided that such required number of votes shall in no event be less than a majority of the full membership of the council.

**State law reference—** A.R.S. §9-462.04(H).

## **Section 6-503      Record.**

**A. Summary Minutes.** Summary minutes giving a reflection of the matters discussed, during a public hearing or meeting, shall be written.

- B. Additional Information.** Other materials and correspondence submitted prior to or at the public hearing or meeting shall be retained as part of the record.

## **Chapter 6 – CONDITIONS OF APPROVAL**

### **Section 6-601        Conditions of Approval.**

### **Section 6-602        Contract for Conditions.**

### **Section 6-603        Time Limits on Conditions.**

### **Section 6-604        Failure to Fulfill Previous Conditions.**

### **Section 6-605        Modification or Removal of Conditions.**

### **Section 6-601        Conditions of Approval.**

The decision-making body may impose conditions on any approval. Such conditions shall be designed to implement the requirements of this Code, protect the public from potential adverse impacts from the proposed use or development, or to fulfill an identified need for public services. In addition to those conditions imposed by the decision-making body, the city may consider as a requirement or condition any plan, exhibit, statement, or other material provided by the applicant and on record with the decision.

### **Section 6-602        Contract for Conditions.**

When the approval requires a contract, conditions shall be set forth in a contract executed by the city and the applicant and approved as to form by legal counsel for the city. If a contract is required, no approval shall be effective until the conditions are recorded. As a condition of approval, the city may require that the contract or a memorandum thereof be filed in the County Deed Records and shall appear in the chain of the title of the subject property, if recording is required. In addition to any personal remedy, the condition shall constitute a burden running with the land in favor of the City of Tempe and, unless otherwise provided, shall be removed only with the written authorization of the Tempe City Council. The contract shall be enforceable by and against the parties, their heirs, successors and assigns. The contract, however, shall not restrict the authority of the City of Tempe from taking actions affecting the property.

### **Section 6-603        Time Limits on Conditions.**

Conditions shall be fulfilled within the time limitations set forth or a reasonable time if no time limitations are specified. Failure to fulfill a condition within said time may result in initiation of revocation of the approval, citation or such other enforcement action as the city deems appropriate.

**Section 6-604      Failure to Fulfill Previous Conditions.**

The decision-making body may withhold a requested approval if it determines that the current applicant has not fulfilled a previous condition or requirement from a previous approval, granted to the applicant, on the subject property, and withholding the permit would encourage compliance or is necessary to protect the public from future noncompliance.

**Section 6-605      Modification or Removal of Conditions.**

Modification or removal of conditions of approval may be sought on appeal or as a new application, in accordance with Section 6-313. Such proposals shall be processed through the same procedure as was used to impose the conditions.

## CHAPTER 7 – RE-APPLICATION AND RECONSIDERATION OF DECISIONS

**Section 6-701 Re-Application.**

**Section 6-702 Reconsideration as Extraordinary Remedy.**

**Section 6-703 Motion for Reconsideration.**

**Section 6-704 Motion for Reconsideration and Appeal Period.**

**Section 6-705 Process for Reconsideration.**

**Section 6-706 Reconsideration and Appeals.**

**Section 6-707 Reconsideration Limit.**

**Section 6-701 Re-Application.**

In the event that an application is denied, an application on the same subject matter will not be considered for a period of one (1) year from the date the initial application was denied, except as follows.

**Section 6-702 Reconsideration as Extraordinary Remedy.**

Reconsideration of a decision is available only as an extraordinary remedy upon a determination by the decision-making body that the criteria in subsections A and B are met:

- A. Mistake.** The party requesting reconsideration has sufficiently alleged in writing that a mistake of law or fact occurred; and the alleged mistake, if found to have occurred, was a substantial factor in the decision; and
- B. Hardship or Delay.** Reconsideration is appropriate to avoid delay or hardship that may be caused by an appeal.

**Section 6-703 Motion for Reconsideration.**

A motion for reconsideration must be filed with the Development Services Manager within fourteen (14) calendar days of the original decision. The motion shall address the factors set forth in Section 6-702 above. The applicable fee shall be submitted with the request. A



motion for reconsideration may be filed by the applicant, the Development Services Manager, or a party of record.

#### **Section 6-704      Motion for Reconsideration and Appeal Period.**

Filing a motion for reconsideration is not a precondition to appealing the decision and does not stay the deadline for filing an appeal. To preserve the right to appeal, a party must file a petition for review as provided in Part 6, Chapter 8. If the decision-making body grants reconsideration, and ultimately rules in favor of the party filing for reconsideration, the party may terminate its appeal.

#### **Section 6-705      Process for Reconsideration.**

The decision-making body shall schedule and notify the parties of a new public hearing or meeting on the merits of the issues raised. Such hearing or meeting shall be held at the next reasonably available opportunity. The decision-making body shall limit their discussion to the issues raised in the motion for reconsideration and the merits of those issues. New evidence or testimony provided by the applicant or staff, shall be limited to grounds upon which the motion or petition for reconsideration was granted.

#### **Section 6-706      Reconsideration and Appeals.**

If the motion for reconsideration is denied or the decision is not altered upon reconsideration, any appeal of the original decision, timely filed, shall be processed in accordance with Part 6, Chapter 8, Appeals. If the motion is granted and the decision-making body modifies the previous decision, the parties to the initial decision shall be notified within ten (10) days of the decision and may appeal the decision as modified pursuant to Part 6, Chapter 8, Appeals.

#### **Section 6-707      Reconsideration Limit.**

No decision shall be reconsidered more than once.

## CHAPTER 8 – APPEALS

### Section 6-801 Purpose.

### Section 6-802 Parties to an Appeal.

### Section 6-803 Appeal Criteria.

### Section 6-801 Purpose.

This chapter provides criteria and procedures to be used whenever and applicant is aggrieved by a decision by a decision-making body.

### Section 6-802 Parties to an Appeal.

Any person, entity, or group aggrieved by a decision under this Code may be parties to an appeal hearing as provided in this Section.

- A. **Public Hearing.** Such appeals shall be heard using the same procedures as the original public meeting/public hearing procedures in Part 6, Chapter 5.
- B. **Appeal Stays Proceedings.** An appeal shall stay all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the decision-making body that, by reason of the fact stated in the certificate, the stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted a court of record on application and notice to the Zoning Administrator.
- C. In the event that a decision made under this Code is appealed, the appeal does not invalidate the approval. The holder of the approval may proceed with a use or development at his or her own risk.
- D. **Conditions When Granting Appeal.** Any appeal granted may be subject to such conditions as the decision-making body deems applicable.

### Section 6-803 Appeal Criteria.

- A. **Appeal Criteria.** To effect an appeal, the petitioner must file an appeal petition with either the Development Services Department or City Clerk not later than 5:00 p.m. on the appeal due date, as provided on the notice of decision. The petition shall contain:
  - 1. The name of the applicant and the city case file number;
  - 2. The name, address and signature of each petitioner; and

3. The specific grounds for appeal. The appeal shall be limited to the issue(s) raised in the petition.

**B. Time Limitations.**

Decision Making Body	Appeal Submittal Deadline	Appeal Body
Zoning Administrator	14 Calendar Days	Hearing Officer
Hearing Officer	14 Calendar Days	Board of Adjustment
Board of Adjustment	30 Calendar Days	Maricopa County Superior Court
Planning and Zoning Commission	14 Calendar Days	City Council
Redevelopment Review Commission	14 Calendar Days	City Council
Design Review Board	14 Calendar Days	City Council
City Council	30 calendar days	Maricopa County Superior Court

- C. Failure to File an Appeal.** Failure to file an appeal with the Development Services Department or City Clerk as applicable, by 5:00 p.m. on the due date, shall render such appeal invalid.

## CHAPTER 9 – TIME EXTENSION, REVOCATION, AND TRANSFER OF PERMITS/APPROVALS

### Section 6-901 Time Extension.

### Section 6-902 Revocation of a Permit/Approval.

### Section 6-903 Transfer of Permits/Approvals.

### Section 6-901 Time Extension.

- A. **Timing of Extension.** If an extension is desired, the holder of the approval or permit must file an application for an extension no later than forty-five (45) days prior to expiration of the approval or permit.
- B. **Procedure and Approval Criteria.** Extension requests shall be processed by the Development Services Manager as an administrative review decision. The Development Services Manager may refer the request to the original decision-making body that issued the original approval if different than the Development Services Manager. An extension may be granted for a maximum of one (1) year from the original date of expiration, and may be less than one (1) year if the Manager deems that a shorter timeframe is warranted. Extensions shall be granted only upon findings that:
1. The use or development could not reasonably commence for reasons beyond the control of the permit holder;
  2. The request for extension is not sought for purposes of avoiding the requirements or standards of this Code or the permit;
  3. There has been no change in city standards or other circumstances likely to necessitate significant modification of the development approval or conditions of approval; and
  4. The use of property, if any, conforms to applicable city codes. The city may deny an extension request if there is an existing Code violation, or impose conditions to facilitate compliance.

### Section 6-902 Revocation of a Permit/Approval.

The city may revoke an approval or permit granted under this Code. In revoking an approval or permit, the following procedures apply:

- A. **Procedure and Criteria.** Following reasonable notice to the permit/approval holder an administrative hearing shall be held to consider all relevant information,

conditions, and concerns related to the permit. The permit/approval holder will be given a reasonable opportunity to resolve all related issues. If the permit/approval holder cannot comply with conditions of the permit/approval or otherwise remains in violation of this Code after thirty (30) days, or sooner when the violations constitute an immediate public health, safety and general welfare concern, the Zoning Administrator shall schedule the item on the next regularly scheduled agenda of the original decision-making body, as may be appropriate, at which time revocation of the permit/approval may be considered. A permit/approval may be revoked if it is determined that:

1. Development which has occurred does not comply with the standards set forth in this Code or any special conditions imposed upon the permit/approval;
2. The permit/approval was approved based on materially incorrect or incomplete information; or
3. A change has occurred to city regulations, the General Plan or applicable law, prior to the development obtaining a vested right or status as a legal nonconforming use, that makes the approved development unlawful or not permitted.

**B. Revoke Permit/Approval.** The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.

**C. Option to Reapply for Permit/Approval.** The holder of the revoked permit/approval may reapply for a new permit/approval at any time as an entirely new application.

## **Section 6-903      Transfer of Permits/Approvals.**

A. Use permits are transferable to successors in interest.